



1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Office of Health Policy

3 (Amendment)

4 900 KAR 6:095. Certificate of need administrative escalations.

5 RELATES TO: KRS 216B.015(6), (31), 216B.061(1)(e), 216B.990(2)[216B.010,  
6 216B.061, 216B.990]

7 STATUTORY AUTHORITY: KRS [~~194A.030, 194A.050,~~] 216B.040(2)(a)1,  
8 216B.061(4) [216B.06(4)]

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the  
10 Cabinet for Health and Family Services to administer Kentucky's Certificate of Need  
11 Program and to promulgate administrative regulations as necessary for the program.  
12 KRS 216B.061(4) requires the cabinet to establish the requirements for administrative  
13 escalations. This administrative regulation establishes the requirements for an adminis-  
14 trative escalation [~~necessary for the orderly administration of the Certificate of Need~~  
15 ~~Program~~].

16 Section 1. Definitions. (1) "Administrative escalation" means an approval from the  
17 cabinet to increase the capital expenditure authorized for a [~~on a previously issued~~] cer-  
18 tificate of need project.

19 (2) "Cabinet" is defined by KRS 216B.015(6)[~~(5)~~].

20 (3) "Substantial change in a project" is defined by KRS 216B.015(31).

21 Section 2. Administrative Escalations. (1) A person shall not obligate a capital

1 expenditure in excess of the amount authorized by an existing certificate of need or a  
2 previously approved administrative escalation unless the person has received an ad-  
3 ministrative escalation or an additional certificate of need from the cabinet.

4 (2) A request ~~[Requests]~~ for an administrative escalation ~~[escalations]~~ shall be sub-  
5 mitted to the cabinet on the OHP - Form 6, Cost Escalation Form, incorporated by ref-  
6 erence in 900 KAR 6:055.

7 (3) The cabinet shall authorize an administrative escalation ~~[escalations]~~ for funds  
8 that have not been obligated and that ~~[which]~~ do not exceed the following limits if there  
9 is not a substantial change in the project:

10 (a) \$100,000, if the capital expenditure authorized by ~~[on]~~ the certificate of need or a  
11 previously approved cost escalation is less than \$500,000; and

12 (b) Twenty-five (25) ~~[Twenty (20)]~~ percent of the capital expenditure if the capital  
13 expenditure authorized by ~~[on]~~ the certificate of need or a previously approved cost es-  
14 calation is \$500,000 or more ~~[to \$4,999,999;~~

15 ~~(c) Ten (10) percent of the amount in excess of \$5,000,000, plus \$1,000,000, for~~  
16 ~~projects if the capital expenditure authorized on the certificate of need is \$5,000,000 to~~  
17 ~~\$24,999,999;~~

18 ~~(d) Five (5) percent of the amount in excess of \$25,000,000, plus \$3,000,000, if the~~  
19 ~~capital expenditure authorized on the certificate of need is \$25,000,000 to \$49,999,999;~~  
20 and

21 ~~(e) Two (2) percent of the amount in excess of \$50,000,000, plus \$4,250,000, if the~~  
22 ~~capital expenditure authorized on the certificate of need is \$50,000,000 or more].~~

23 (4) If an administrative escalation is authorized, the certificate of need holder shall

1 submit any additional certificate of need application fee required by the increased capi-  
2 tal expenditure pursuant to 900 KAR 6:020.

3 (5) The escalation of a capital expenditure in excess of the limits set forth in subsec-  
4 tion (3) of this section shall:

5 (a) Constitute a substantial change in a project; and

6 (b) Require a certificate of need pursuant to KRS 216B.061(1)(e).

7 (6) The unauthorized obligation of a capital expenditure in excess of the amount au-  
8 thorized for a certificate of need project~~[on a certificate of need]~~ shall be:

9 (a) Presumed to be a willful violation of KRS Chapter 216B; and

10 (b) Subject to the penalties set forth at KRS 216B.990(2).

900 KAR 6:095

REVIEWED:



Paul A. Coomes, Ph.D.  
Executive Director  
Office of Health Policy

11/1/16  
Date

APPROVED:



Vickie Yates Brown Glisson  
Secretary  
Cabinet for Health and Family Services

12/7/16  
Date

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:**

A public hearing on this administrative regulation shall, if requested, be held on January 23, 2017 at 9:00 a.m. in Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 13, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation through January 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, phone 502-564-7905, fax: 502-564-7573, email [tricia.orme@ky.gov](mailto:tricia.orme@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 900 KAR 6:095

Contact Persons: Diona Mullins, Office of Health Policy, phone (502)564-9592, email [Diona.mullins@ky.gov](mailto:Diona.mullins@ky.gov); Tricia Orme, Office of Legal Services, phone (502) 564-7905, email [Tricia.orme@ky.gov](mailto:Tricia.orme@ky.gov).

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements necessary for an administrative escalation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes KRS 216B.040(2)(a)1 and 216B.061(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements necessary for an administrative cost escalation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements necessary for an administrative cost escalation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation simplifies the requirements necessary for an administrative escalation. A cost escalation of twenty-five (25) percent is proposed for CON projects with approved expenditures of \$500,000 or more, allowing these projects to have higher escalations and to qualify for administrative escalations instead of having to submit a CON application for the escalation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to simplify the requirements necessary for an administrative escalation. A cost escalation of twenty-five (25) percent is proposed for CON projects with approved expenditures of \$500,000 or more, allowing these projects to have higher escalations and to qualify for administrative escalations instead of having to submit a CON application for the escalation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements necessary for an administrative escalation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the requirements necessary for an administrative escalation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Annually approximately 150 certificate of need applications are submitted.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Action is not required of a CON holder unless there is an escalation in their proposed capital expenditure. A CON holder shall not obligate a capital expenditure in excess of the amount authorized by an existing CON or a previously approved administrative escalation unless the CON holder has received an administrative escalation from the cabinet as prescribed by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to CON applicants to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The cabinet has simplified the formula for determining whether an escalation qualifies for an administrative escalation. A twenty-five (25) percent cost escalation is proposed for CON projects with approved expenditures of \$500,000 or more, allowing projects with higher escalations to now qualify for administrative escalations instead of having to submit a CON application for the escalation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not directly increase any fees. The CON holder will continue to be required to pay the CON application fee for any authorized administrative escalation.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation: 900 KAR 6:095

Contact Persons: Diona Mullins, Office of Health Policy, phone (502) 564-9592, email [Diona.mullins@ky.gov](mailto:Diona.mullins@ky.gov); Tricia Orme, Office of Legal Services, phone (502) 564-7905, email [tricia.orme@ky.gov](mailto:tricia.orme@ky.gov).

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Health care facilities owned by the state, county or city may request administrative escalations if projected CON capital expenditures escalate.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The authorizing statutes are KRS 216B.040(2)(a)1 and 216B.061(4).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate additional revenue for state or local government during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate additional revenue for state or local government during subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program during the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: